

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CLIFTON DAY, *ET AL.*,

Plaintiffs,

Case No. 05-72677

v.

HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

SAL AHMED, *ET AL.*,

Defendants.

MAGISTRATE JUDGE
VIRGINIA M. MORGAN

**ORDER ADOPTING MAGISTRATE’S REPORTS &
RECOMMENDATIONS [D/E # 27] DISMISSING THE CASE WITHOUT
PREJUDICE**

Before the Court is a Magistrate Judge’s Report and Recommendation (“R & R”). The Magistrate recommends that this Court grant the Defendants’ Motion to Dismiss because Plaintiffs failed to exhaust all of their numerous claims citing, *Jones Bey v. Johnson*, 407 F.3d 801 (6th Cir. 2005).

If a district court is presented with a ‘mixed’ petition, it has the power under subsection (c)(2) [which permits dismissal on the merits of an unexhausted claim that is frivolous or fails to state a claim] to dismiss any frivolous claims, exhausted or not, *with prejudice*. However, dismissal under subsection (a) allows the court to dismiss the entire action *without prejudice*.” *Id.* at 807 (emphasis in original).

The Magistrate recommended that the entire mixed petition be dismissed without prejudice, to be brought at another date.

It appears that some of the claims raised by Plaintiffs have been exhausted

but the supporting documentation is incomplete, such as Plaintiff Cirisan's Step I grievance form which lists the Defendants he was complaining against. Plaintiffs in their objections to the Magistrate's Report and Recommendation state that they have been subjected to retaliatory shakedowns and that some of their legal papers have been seized during the process. Grievances have been filed relating to this matter. Regardless of the merits of the grievances, this Court now requests Parnell Correctional Facility to provide Plaintiffs' with copies of all the grievance step forms that they have in their possession.

Having reviewed the file, the Magistrate's Report and Recommendation, the motions, and the objections,

IT IS HEREBY ORDERED that this Court **ADOPTS** the Magistrate's Report and Recommendation [D/E # 27] as the findings and conclusions of the Court. Accordingly, Defendants' Motion to Dismiss [D/E # 14] is **GRANTED** and the case is **DISMISSED WITHOUT PREJUDICE**. Plaintiffs' Motion for Summary Judgment [D/E # 15], Motion for Default Judgment [D/E # 21], Motion to Dismiss [D/E # 25] are **DENIED**.

IT IS FURTHER ORDERED that the Parnell Correctional Facility shall within 30 days provide Plaintiffs with any grievance step forms that Plaintiffs may be missing. If Parnell Correctional Facility does not provide Plaintiffs with the paperwork within this time frame, Plaintiffs will be allowed to file their amended complaint and their claims shall be considered exhausted.

IT IS FURTHER ORDERED that upon receipt of grievance step forms,

Plaintiffs will have 21 days in which they may file an amended complaint that contains only exhausted claims.

IT IS SO ORDERED.

S/ARTHUR J. TARNOW

Arthur J. Tarnow

United States District Judge

Dated: March 27, 2006